TENNESSEE GENERAL ASSEMBLY FISCAL REVIEW COMMITTEE



FISCAL NOTE

HB 1696

January 21, 2022

SUMMARY OF BILL: Enhances the penalty for the offense of aggravated burglary from a Class C felony to a Class B felony, if the burglary is of an occupied habitation. Increases the penalty for especially aggravated burglary, from a Class B felony to a Class A felony, if the burglary is of a habitation.

FISCAL IMPACT:

Increase State Expenditures – \$5,210,900 Incarceration

Assumptions:

Aggravated Burglary

- Pursuant to Tenn. Code Ann. § 39-13-1002(a), a person commits burglary who, without the effective consent of the property owner:
 - Enters a building other than a habitation, or any portion thereof, not open to the public, with intent to commit a felony, theft or assault;
 - Remains concealed, with the intent to commit a felony, theft or assault, in a building;
 - o Enters a building and commits or attempts to commit a felony, theft or assault; or
 - Enters any freight or passenger car, automobile, truck, trailer, boat, airplane, or
 other motor vehicle with intent to commit a felony, theft or assault or commits or
 attempts to commit a felony, theft or assault.
- Pursuant to Tenn. Code Ann. § 39-14-401(1), habitation:
 - Means any structure, including buildings, module units, mobile homes, trailers, and tents, which is designed or adapted for the overnight accommodation of persons;
 - Includes a self-propelled vehicle that is designed or adapted for the overnight accommodation of persons and is actually occupied at the time of initial entry by the defendant; and
 - o Includes each separately secured or occupied portion of the structure or vehicle and each structure appurtenant to or connected with the structure or vehicle.
- Pursuant to Tenn. Code Ann. § 39-14-401(2), occupied means the condition of the lawful physical presence of any person at any time while the defendant is within the habitation or other building.
- Pursuant to Tenn. Code Ann. § 39-13-1003, aggravated burglary is burglary of a habitation and punished as a Class C felony offense.

- The proposed legislation increases the penalty for aggravated burglary to a Class B felony offense if the burglary is of an occupied habitation.
- Based upon information provided by the Department of Correction (DOC), there has been an average of 783 admissions in each of the last three years for the Class C felony offense under Tenn. Code Ann. § 39-13-1003 for aggravated burglary, with an estimated average time served of 1.69 years, after adjusting for pre-trial jail credits.
- According to the Bureau of Justice Statistics National Crime Victimization Survey 2010 report *Victimization During Household Burglary* (NCJ 227379), in approximately 28 percent of the estimated 3.7 million household burglaries that occurred each year on average from 2003 to 2007, a household member was present during the burglary.
- This analysis assumes that 28 percent of habitations are occupied during a burglary each year in Tennessee and that this percentage remains constant into perpetuity, resulting in 219 (783 x 28.0%) additional admissions annually.
- Pursuant to Tenn. Code Ann. § 40-35-501(u)(2)(B), a person with two or more prior convictions on or after January 1, 2017, for either aggravated burglary or especially aggravated burglary or a combination of the two offenses is required to serve at least 70 percent of the sentence imposed by the court before becoming release eligible.
- This analysis assumes such offenders will serve the same established average reduced sentence length as the general prison population.
- The average time served for a Class B felony offense is 3.27 years.
- Accounting for recidivism rates, the proposed legislation will result in 127 admissions annually serving an additional 1.58 years (3.27 1.69).
- Based on population data from the U.S. Census Bureau, population growth in Tennessee averaged 0.74 percent per year for each of the past 10 years (from 2010 to 2020).
- The weighted average operational costs per day are estimated to be \$51.36 for inmates housed at state facilities and \$48.77 for inmates housed at local facilities.
- The increase in incarceration costs are estimated to be the following over the next tenyear period:

Increase in State Expenditures		
Amount		Fiscal Year
\$	9,500	FY22-23
\$	38,100	FY23-24
\$	2,696,300	FY24-25
\$	4,973,700	FY25-26
\$	3,819,800	FY26-27
\$	3,868,000	FY27-28
\$	3,883,400	FY28-29
\$	3,905,600	FY29-30
\$	3,934,600	FY30-31
\$	3,984,200	FY31-32

• Pursuant to Tenn. Code Ann. § 9-4-210, recurring cost increases are to be estimated on the highest of the next ten fiscal years; therefore, the recurring increase in incarceration costs will be \$4,973,700.

Especially Aggravated Burglary

- Pursuant to Tenn. Code Ann.§ 39-13-1004, especially aggravated burglary is a Class B felony offense in which the following occurs:
 - o Burglary of a habitation or building other than a habitation; and
 - o The victim suffers serious bodily injury.
- The proposed legislation enhances the penalty for especially aggravated burglary to a Class A felony offense, if the burglary is of a habitation.
- Based on information provided by the DOC, there has been an average of 9.67 Class B felony admissions of especially aggravated burglary under Tenn. Code Ann. § 39-13-1004 each year over the past three years, with an estimated average time served of 5.84 years, after adjusting for pre-trial jail credits.
- According to Federal Bureau of Investigation 2019 Crime in the United States *Offense Analysis Number and Percent Change 2018-2019* Table 23, approximately 63 percent of reported burglaries in the United States occurred in a residence.
- This analysis assumes that 63 percent of especially aggravated burglaries occur in a habitation each year in Tennessee and that this percentage remains constant into perpetuity.
- The proposed legislation will result in 63 percent, or 6 (9.67 x 63.0%) of especially aggravated burglary admissions being increased to a Class A felony admission.
- The average time served for a Class A felony is 13.79 years.
- Accounting for recidivism rates, the proposed legislation will result in 3 admissions annually serving an additional 7.95 years (13.79 5.84).
- Based on population data from the U.S. Census Bureau, population growth in Tennessee averaged 0.74 percent per year for each of the past 10 years (from 2010 to 2020).
- The weighted average operational costs per day are estimated to be \$51.36 for inmates housed at state facilities and \$48.77 for inmates housed at local facilities.
- The estimated increase in incarceration costs are estimated to be the following over the next ten-year period:

Increase in State Expenditures		
Amount	Fiscal Year	
\$ -	FY22-23	
\$ -	FY23-24	
\$ -	FY24-25	
\$ -	FY25-26	
\$ -	FY26-27	
\$ -	FY27-28	
\$ 46,30	0 FY28-29	
\$ 121,90	0 FY29-30	
\$ 178,90	0 FY30-31	
\$ 237,20	0 FY31-32	

- Pursuant to Tenn. Code Ann. § 9-4-210, recurring costs increases are to be estimated on the highest of the next ten fiscal years; therefore, the recurring increase in incarceration costs will be \$237,200.
- The total recurring increase in incarceration expenditures will be \$5,210,900 (\$4,973,700 + \$237,200).
- Based on the Fiscal Review Committee's 2008 study and the Administrative Office of the Courts' 2012 study on collection of court costs, fees, and fines, collection in criminal cases is insignificant. The proposed legislation will not significantly change state or local revenue.
- The estimated fiscal impact of the proposed legislation does not consider the availability of beds in state and local facilities, but is based solely on the current operating costs of state facilities and the reimbursement rates for local facilities as is required by Tenn. Code Ann. § 9-4-210.
- All calculations used in completion of this fiscal note are available upon request.

CERTIFICATION:

The information contained herein is true and correct to the best of my knowledge.

Krista Lee Carsner, Executive Director

Krista Lee Caroner

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